

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of Minnesota Power's Petition to
Amend its Electric Service Agreement with
Eveleth Mines

ISSUE DATE: April 29, 1988

DOCKET NO. E-015/M-88-46

ORDER APPROVING CONTRACT
AMENDMENT

PROCEDURAL HISTORY

On January 15, 1988 Minnesota Power (the Company) filed a petition requesting approval of proposed amendments to its Electric Service Agreement with Eveleth Mines, a Large Power customer. A consortium of four other Large Power customers, Hibbing Taconite Joint Venture, Inland Steel Mining Company, National Steel Pellet Company, and USX Corporation, filed comments opposing the amendments as discriminatory under Minn. Stat. § 216B.03.

The Department of Public Service (DPS or the Department) examined the contract amendments and recommended approval.

STATEMENT OF THE ISSUE

The issue before the Commission is whether the proposed contract amendments are fair and reasonable under Minn. Stat. § 216B.03 and should be approved.

FINDINGS AND CONCLUSIONS

Factual Background

In the mid 1970's, many of the taconite producers on Minnesota Power's Large Power tariff planned

major expansions of their operations. The Company responded by planning major expansion of its generation capacity. At the same time, it required Large Power customers to sign long term contracts to help ensure recovery of its expansion costs.

In the early 1980's changes in the world steel market caused the demand for domestic steel to fall dramatically. Many of the taconite producers who had signed long term contracts were forced to curtail their operations. They therefore had no need for much of the power they had agreed to take, and had difficulty paying for it. This created problems for the customers themselves, for the Company, and for ratepayers in other classes, whose rates reflected a rate base expanded to meet Large Power needs which had since dwindled.

Enforcing the long term contracts was an unsatisfactory approach, because some Large Power customers could not continue to operate if forced to take power at contract levels. What developed was a compromise approach in which the Company and individual Large Power customers negotiated contract amendments reducing contract demand levels in return for extending the length of the contracts. This provided some financial relief to both customers and the Company, while allowing all parties additional time for planning. The Commission approved these contract amendments in Dockets E-015/M-83-111, E-015/M-85-794, and E-015/M-86-180.

Eveleth Mines (Eveleth) did not accept the contract amendments approved in Docket E-015/M-85-794. In that docket, the Commission urged the Company to continue negotiations with other taconite producers until they reached agreement. The amendments currently before the Commission are the results of those negotiations.

Specific Features Alleged to Be Discriminatory

The consortium opposing the contract amendments points to the following provisions as discriminatory:

1. Eveleth may terminate the contract up to seven months before its expiration by paying \$3.00 per kw of contract demand per month for the remainder of the contract term;

None of the consortium members were able to negotiate contracts containing early termination provisions.

2. The amendments allow Eveleth a larger contract demand reduction (28%) than other customers received;

Consortium members received a contract demand reduction of 3% per year of contract extension, for a maximum of six years;

3. Eveleth's contract provides more rate relief (\$4.28 million) than it would have received under contracts identical to those of consortium members (\$3.74 million);
4. Eveleth's contract reduces contract demand levels as of May 25, 1987, approximately seven months before it was signed.

Consortium members state that the Company rejected their requests for retroactive demand level adjustments during their negotiations.

Consortium members urge the Commission to condition approval of the amendments on the Company's offering all other Large Power customers similar termination provisions and a refund calculated to represent the benefit they would have received from similar retroactive adjustment of their contract demand levels.

The Legal Standard

The statute governing the setting of electric rates in Minnesota provides as follows:

Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, unreasonably prejudicial or discriminatory, but shall be sufficient, equitable and consistent in application to a class of customers. . . .

Minn. Stat. § 216B.03 (1986).

Commission Action

The Commission agrees with the Department that the contract amendments at issue are not unjust, unreasonably preferential, or discriminatory. They are the result of arms-length negotiations by relatively equal bargaining partners. Their terms are not unreasonable as to either party; they are mutually advantageous. Eveleth receives rate relief and Minnesota Power receives assurance of continued revenue from the Eveleth account. Neither party appears to have imposed its will on the other.

Furthermore, the amendments are in the general public interest. Preventing drastic and sudden revenue loss by Minnesota Power is a matter of public concern. Its ratepayers make up a substantial portion of the citizens of Northeastern Minnesota and include major industries on which the area's economic vitality depends. Retaining large volume customers is critical to maintaining affordable rates. Affordable rates are important to the economic health of the area, its industries, and all its citizens. That is why the Commission has in the past urged these two parties to work out their differences.

The remaining issue is whether Eveleth and the Company have negotiated contract amendments

which are unfairly preferential and discriminatory as to the Company's other Large Power Customers. Again, the Commission agrees with the Department that they have not.

The consortium compares isolated features of Eveleth's contract with isolated features in their own contracts as evidence that Eveleth's contract is unduly preferential. The Commission agrees with the Department that contracts such as these can only be examined and compared as wholes. They are negotiated as a package, and individual terms vary according to the overall goals and values of the parties. Only by examining the contract as a whole can one make a meaningful judgment about how favorable or unfavorable it is.

With this in mind, the Department prepared a chart listing the ratios between what the Company gained in assured revenue and what it lost in revenue concessions in its amended contracts with each of the consortium members and with Eveleth. That chart is attached as Attachment 1. Eveleth's ratio of .240, assuming it does not exercise its right to early termination, is clearly within normal limits. Its ratio if it should exercise its early termination option would be .345, still not aberrant in relation to the ratios of other companies.

Furthermore, the particular provisions to which the consortium members object are not as one-sided as they suggest. The early termination provision, for example, accelerates termination by only seven months and requires payment at reduced rates for power the terminating company would not receive. Similarly, although Eveleth received a larger contract demand level reduction than consortium members, Eveleth paid for each kW of reduced demand. Consortium members, on the other hand, received theirs in return for extension of their contracts. Finally, the retroactive effective date is a less attractive feature when one remembers that Eveleth was required to pay for contract demand reductions.

The Commission concludes that the contract amendments negotiated by Minnesota Power and Eveleth are not unreasonably preferential or discriminatory, are just, are in the public interest, and will be approved.

ORDER

1. The Commission approves Minnesota Power's January 15, 1988 petition to amend its Electric Service Agreement with Eveleth Mines.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)